

6

Information Bulletin



March, 1991

Number 6

RPA Wetlands Designation

The inclusion of nontidal wetlands within the Resource Protection Areas is crucial and integral to meeting the criteria in the Chesapeake Bay Preservation Act Regulations adopted by the Chesapeake Bay Local Assistance Board. What is not completely clear to many concerned local governments and citizens is the question of where the line should be drawn between those nontidal wetlands that must be included within the RPA and other nontidal wetlands. Questions have been raised concerning the definitions of "contiguous" and "connected by surface flow" and the extent to which whole wetland systems meeting those criteria at some point must be included in RPAs.

The Local Assistance Manual (hereinafter referred to as the Manual), citing §§ 3.2.B.1 and 3.2.B.2 of the Regulations, states the following:

The designation of Resource Protection Areas (RPAs) requires the inclusion of tidal wetlands, as well as nontidal wetlands which are both contiguous and connected by surface flow to either tidal wetlands or tributary(perennial) streams.

"Contiguous" is defined in *Webster's Ninth New Collegiate Dictionary* (established reference for terms in Virginia regulations) as follows:

- 1: being in actual contact: touching along a boundary or at a point; ... 3: next or near in time or sequence; 4: touching or connected throughout in an unbroken sequence.

Figure 1 is taken from the Manual. For the purposes of this interpretation, it is assumed to illustrate a contiguous nontidal wetland that meets the federal definition of a wetland established in the *Federal Manual For Identifying and Delineating Jurisdictional Wetlands* (1989, or as amended), hereinafter referred to as the *Federal Manual*. The fact that the wetland has been subdivided according to the U.S. Fish and Wildlife Service National Wetland Inventory (NWI) Classification system has no bearing on the contiguity of the wetland community in question. The small isolated wetland in the illustration, on the other hand, is *not* contiguous to the tributary stream but is separated by an area not classified as a wetland.

The phrase "surface flow" is interpreted on page III-24 of the Manual as "actual ground saturation or inundation." "Ground saturation" means *saturated to the ground surface*. In plain language, "surface flow" means observable moisture on the ground surface. This is different from and more exclusive than the hydrological parameter currently defined in the *Federal Manual* as inundation or saturation "within 18 inches of the surface dependent on the soil's permeability." In either case, the required hydrological condition must exist for a week or more during the growing season. The length



Printed on recycled paper

of the growing season varies for different regions of Tidewater Virginia. The hydrological "connection" may be characterized by the flow direction – that is, the flow moves *in the direction of* the tidal wetland or tributary stream.

Practically speaking, it may be difficult in the field to discriminate wetlands that meet the hydrological connection required by the Regulations from the larger group that satisfy the *Federal Manual* requirement, depending on the time of year the delineation is performed. The best available maps reflect the federal definition of wetlands. For that reason, local governments may have to rely on the federal definition to make their initial designations of Chesapeake Bay Preservation Areas. However, a landowner may request a reduction in the area of RPA wetlands on his or her property by presenting site-specific information that reflects the more exclusive requirements of the Regulations.

Regarding the extent of RPA designation, the point of delineation between those wetlands or portions of wetland systems that are mandatory RPA features associated with perennial tributary streams and optional wetlands associated with intermittent streams may be determined based on 1:24,000 scale USGS topographic quadrangle maps. These maps symbolize perennial streams as a solid blue line and intermittent streams as a dotted blue line. Perennial streams have flow in them all the time, not just during storm events or wet seasons. Optional field investigations of the streams in question may yield different but more accurate classifications. Intermittent streams and their associated wetlands are *not required* to be included in the RPA.

However, a wetland contiguous and connected by surface flow to an *intermittent* stream *may* be designated as an RPA feature under the "other lands" provision in § 3.2.A.4 of the Regulations, if the local government finds the particular wetland "has intrinsic water quality value due to the ecological and biological processes [it] perform[s] or [is] sensitive to impacts which may cause significant degradation to the quality of state waters" (§ 3.2.A). These wetlands typically provide significant groundwater recharge, flood control, and sediment and nutrient removal along with other values.

Figure 2 depicts a perennial stream with an intermittent stream running into it from the left side of the diagram. If the intermittent stream and its associated wetlands are *not* designated as RPA, the Department recommends the dividing point be based on the average width of the wetlands associated with the perennial stream as determined immediately on either side of the juncture of the two streams. A 100-foot wide vegetated buffer area must be included in the RPA landward of the RPA wetlands, crossing the intermittent channel as shown.

A similar situation involves a headwater area as shown at the top of Figure 2, where a perennial stream itself becomes intermittent in its upper reaches. Once again, the initial point of delineation may be determined by examining the USGS map. If the intermittent area is *not* designated as RPA, a 100-foot buffer area must be delineated along the dividing line, thus crossing the intermittent stream. As in the previous case, if a question arises concerning the accuracy of the point of delineation, a field investigation may be appropriate.

In conclusion, the Department recommends that all wetlands should be *considered* for inclusion within a Chesapeake Bay Preservation Area. Wetlands meeting the criteria established in § 3.2 of the Regulations as interpreted above, including association with perennial streams, *must* be designated as RPA features with a 100-foot vegetated buffer area located landward of those features as required by § 3.2.B.5 of the Regulations. Wetlands meeting the criteria in § 3.2 but associated with intermittent streams *may* optionally be included in RPAs according to the best judgement of the concerned locality.